

SUPPLEMENT TO THE MINNESOTA SENTENCING GUIDELINES AND COMMENTARY,
REVISED AUGUST 1981
Modifications Effective August 1, 1982

The Commission has adopted the following changes to be effective August 1, 1982 and applies to offenses committed on or after that date.

Updating the commentary language to include corresponding reference to Intrafamilial Sexual Abuse statutes:

***II.A.04.** Incest was excluded because since 1975, the great majority of incest cases are prosecuted under the criminal sexual conduct statutes and more recently, under the intrafamilial sexual abuse statutes. ~~The Commission believes that this practice provides more anonymity to the victim than would be possible for prosecutions under the incest statute.~~ If an offender is convicted of incest under Minn. Stat. § 609.365, and when the offense would have been a violation of one of the criminal sexual conduct or intrafamilial sexual abuse statutes, the severity level of the applicable criminal sexual conduct or intrafamilial sexual abuse statute should be used. For example, if a father is convicted of incest for the sexual penetration of his ten year old daughter, the appropriate severity level would be the same as criminal sexual conduct in the first degree or intrafamilial sexual abuse in the first degree. On the other hand, when the incest consists of behavior not included in the criminal sexual conduct or intrafamilial sexual abuse statutes (for example, consenting sexual penetration involving individuals over age ~~16~~ 18) that offense behavior is excluded from the Offense Severity Reference Table.*

***II.A.05.** The other offenses were excluded because prosecutions are rarely, if ever, initiated under them. There were no convictions for these excluded offenses during our fiscal year 1978 study. The Commission's ranking of offense severity was based on offense behavior that is usually associated with a particular offense. ~~Where~~ When there have been no prosecutions under a particular statute, it is impossible to rank it on the basis of experience or usual practice. If, in the future, persons are convicted of offenses excluded from the Offense Severity Reference Table, judges should exercise their discretion by assigning an offense a severity level which they believe to be appropriate. If a significant number of future convictions are obtained under one or more of the excluded offenses, the Commission will determine an appropriate severity level, and will add the offense to the Offense Severity Reference Table.*

Amendment of Criminal History in section II.B.1 to be consistent with the Hernandez decision, and modification of the computation of decay periods in II.B.1.e:

The offender's criminal history index score is computed in the following manner:

1. Subject to the conditions listed below, the offender is assigned one point for every felony conviction for which a felony sentence was stayed or imposed, and that occurred before the current sentencing.

- e. Prior felony sentences will not be used in computing the criminal history score ~~after~~ if a period of ten years has elapsed since the date of discharge from or expiration of the sentence to the date of offense of any subsequent misdemeanor, gross misdemeanor or felony, provided that during the period the individual had not received a felony, gross misdemeanor, or misdemeanor sentence, whether stayed or imposed.

The commentary change made December, 1981, pursuant to Herandez, is further amended:

II.B.101. Commission research showed that number of prior felony convictions was the aspect of prior criminal record most strongly related to the sentencing decision. The basic rule for computing the number of prior felony points in the criminal history score is that the offender is assigned one point for every felony conviction for which a felony sentence was stayed or imposed before the current sentencing. ~~The phrase "for which a felony sentence was stayed or imposed" refers to multiple offenses occurring in a single behavioral incident in which state law prohibits the offender being sentenced on more than one offense. In such cases, the offender would receive one point on the criminal history score for each felony sentence, regardless of the number of felony convictions arising from the single behavioral incident. In cases of multiple offenses occurring in a single behavioral incident in which state law prohibits the offender being sentenced on more than one offense, the offender would receive one point. The phrase "before the current sentencing" means that in order for prior convictions to be used in computing criminal history score, the felony sentence for the prior offense must have been stayed or imposed before sentencing for the current offense. When multiple current offenses are sentenced on the same day, sentencing should occur in the order in which the offenses occurred.~~

A cosmetic change in the commentary language:

II.B.102. In addition, the Commission established policies to deal with several specific situations which arise under Minnesota law. The first deals with conviction under Minn. Stat. § 609.585, under which persons committing theft or other felony offense during the course of a burglary could be convicted of and sentenced for both the burglary and other felony. In all other instances of multiple convictions arising from a single course of conduct, where there is a single victim, persons may be sentenced on only one offense. For purposes of computing criminal history, the Commission decided that prior multiple sentences under provision of Minn. Stat. § 609.585 should also receive one point. This was done to prevent inequities due to past variability in prosecutorial and sentencing practices with respect to that statute, to prevent systematic manipulation of 609.585 in the future, and to provide a uniform and equitable method of computing criminal history scores for all cases of multiple convictions arising from a single course of conduct, ~~where~~ when single victims are involved.

Amending commentary language to be consistent with the change in computing the decay factor:

II.B.105. However, when a prior felony conviction resulted in a stay of imposition which was successfully served, the offense will be counted as a felony for purposes of computing criminal history scores for five years from the date of discharge or expiration of the stay, and thereafter would be considered a misdemeanor. Under Minn. Stat. § 609.13, a person who successfully completes a stay of imposition is deemed to have been convicted of a misdemeanor, not a felony. The Commission thought that the primary purpose of this provision was to protect those who do not recidivate from civil disabilities that may attach to being convicted of a felony, rather than to provide a blanket immunity from having prior felonious behavior considered at future sentencing for those who do recidivate with a new felony offense. The effect of the Commission's five-year limit on considering such sentences as felony convictions, together with the "decay factor" on misdemeanor records (Criminal History item 3c, below) is that stays of imposition following felony convictions shall be counted as a felony for five years from the date of discharge, and thereafter shall not be used in computing criminal history scores, provided the offender did not commit an offense during that five year period which resulted in a was not convicted of a new misdemeanor, gross misdemeanor, or felony sentence. during that five-year period. (The offense of conviction is a felony if the maximum imprisonment sentence authorized by statute is at least one year and one day.)

II.B.106. Finally, the Commission established a "decay factor" for the consideration of prior felony offenses in computing criminal history scores. The Commission decided it was important to consider not just the total number of felony sentences, but also the time interval between those sentences and subsequent offenses. A person who was sentenced for three felonies within a five-year period is more culpable than one sentenced for three felonies within a twenty-year period. The Commission decided that after a significant period of ~~conviction~~ offense-free living, the presence of old felony sentences should not be considered in computing criminal history scores. Prior felony sentences would not be counted in criminal history score computation if ten years had elapsed ~~since~~ between the date of discharge from or expiration of the sentence, ~~provided that during the ten-year period, the individual was not sentenced for a felony, gross misdemeanor, or misdemeanor and~~ the date of a subsequent offense for which a misdemeanor, gross misdemeanor, or felony sentence was imposed or stayed. (Traffic offenses are excluded in computing the decay factor.) It is the Commission's intent that time spent in confinement pursuant to an executed or stayed criminal sentence not be counted in the computation of the ~~conviction~~ offense-free period.

Relative to computing criminal history when a fine is the only sanction given:

II.B.107. *If the offender's prior record involves convictions of offenses for which fines were the only sanction given, use the following schedule to determine whether the offense should be characterized as a misdemeanor, gross misdemeanor, or felony for purposes of computing criminal history scores:*

<u>If fine imposed is between:</u>	<u>Classify offense as:</u>
\$101 - \$500	Misdemeanor
\$501 - \$1,000	Gross Misdemeanor
more than \$1,000	Felony

If a fine is the only penalty provided by statute for the offense of conviction, and the fine imposed is in excess of \$500, then the offense would be counted as a gross misdemeanor. (An example of this situation is Distribution of Obscene Materials, Minn. Stat. 617.241 (1982)).

If a fine is \$100 or less, and that is the only sanction imposed, the conviction would be deemed a petty misdemeanor under Minn. R. Crim. P. § 23.02, and would not be used to compute the criminal history score. Convictions which are petty misdemeanors by statutory definition, or which have been certified as petty misdemeanors under Minn. R. Crim. P. § 23.04, will not be used to compute the criminal history score.

Computation of decay periods for misdemeanors and gross misdemeanors in section II.B.3.c. and corresponding commentary language:

3. c. Prior misdemeanor and gross misdemeanor sentences will not be used in computing the criminal history score ~~after~~ if a period of five years has elapsed since the date of discharge from or expiration of the sentence to the date of offense of any subsequent misdemeanor, gross misdemeanor, or felony, provided that during the period the individual had not received a felony, gross misdemeanor, or misdemeanor sentence, whether stayed or imposed.

II.B.304. The Commission also adopted a "decay" factor for prior misdemeanor and gross misdemeanor offenses for the same reasons articulated above for felony offenses. ~~If five years have elapsed since between the expiration of or discharge from a misdemeanor or gross misdemeanor sentence, and if during that five-year period the offender had not been sentenced for a misdemeanor, gross misdemeanor, or felony, and the date of a subsequent offense for which a misdemeanor, gross misdemeanor, or felony sentence was stayed or imposed, the misdemeanor or gross misdemeanor sentences will not be used in computing the criminal history score. (Traffic offenses are excluded in computing the decay factor.) It is the Commission's intent that time spent in confinement pursuant to an executed or stayed criminal sentence not be counted in the computation of the conviction offense-free period.~~

Change for consistency in format:

II.B.406. *Under Laws of 1980, Chapter 580, sec. 16 (amends Minn. Stat. § 260.161, subd. 1), juvenile courts are required to maintain juvenile records until the offender reaches the age of 23, and release those records to requesting adult courts. The adult courts are authorized to use juvenile information to determine a proper sentence.*

5. The designation of out-of-state convictions as felonies, gross misdemeanors, or misdemeanors shall be governed by the offense definitions and sentences provided in Minnesota law.

Expanding definition of foreign offenses to include laws of other nations:

II.B.501. *Out-of-state convictions include convictions under the laws of any other state, or the federal government, including convictions under the Uniform Code of Military Justice, or convictions under the law of other nations.*

Change for consistency in format:

II.B.504. *It was contemplated that the sentencing court, in its discretion, should make the final determination as to the weight accorded foreign convictions. In so doing, sentencing courts should consider the nature and definition of the foreign offense, as well as the sentence received by the offender.*

6. The criminal history score is the sum of points accrued under items one through four above.

Relating to proportionality in sentencing when departing from the presumptive sentence, section II.D:

D. Departures from the Guidelines: The sentences provided in the Sentencing Guidelines Grid are presumed to be appropriate for every case. The judge shall utilize the presumptive sentence provided in the Sentencing Guidelines Grid unless the individual case involves substantial and compelling circumstances. When such circumstances are present, the judge may depart from the presumptive sentence and stay or impose any sentence authorized by law. When departing from the presumptive sentence, the court should pronounce a sentence which is proportional to the severity of the offense of conviction and the extent of the offender's prior criminal history, and should take into substantial consideration the statement of purpose and principles in Section I, above. When

departing from the presumptive sentence, a judge must provide written reasons which specify the substantial and compelling nature of the circumstances, and which demonstrate why the sentence selected in the departure is more appropriate, reasonable, or equitable than the presumptive sentence.

~~In making decisions about departing from the guidelines, judges should take into substantial consideration the statement of purpose and principles in section I above.~~

Addition of commentary language to encompass sentencing for possession or use of Metal-Penetrating Bullets:

II.F.05. Minn. Stat. § 624.74 provides for a maximum sentence of three years or payment of a fine of \$3000 or both, for possession or use of metal-penetrating bullets during the commission of a crime. Any executed felony sentence imposed under Minn. Stat. § 624.74 shall run consecutively to any felony sentence imposed for the crime committed with the weapon, thus providing an enhancement to the sentence imposed for the other offense. The extent of enhancement, up to the three year statutory maximum, is left to the discretion of the Court. If, for example, an offender were convicted of Aggravated Robbery with use of a gun and had a zero criminal history score, the mandatory minimum sentence for the offense would be 36 months with a presumptive sentence of 54 months; if the offender were also convicted of Minn. Stat. § 624.74, Metal-Penetrating Bullets, the Court could, at its discretion, add a maximum of 36 months, without departing from the guidelines.

Section II.G. is amended as follows:

G. Convictions for Attempts or Conspiracies: For persons convicted of attempted offenses or conspiracies to commit an offense, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell defined by the offender's criminal history score and the severity level of the completed offense, and dividing the duration contained therein by two, but such sentence shall not be less than one year and one day except that for Conspiracy to Commit a Controlled Substance offense as per Minn. Stat. 152.09, in which event the presumptive sentence shall be that for the completed offense. Further, the presumptive disposition for Conspiracy to Commit or Attempted First Degree Murder, Minn. Stat. 609.185, with 609.17 or 609.175 cited, shall be imprisonment for all cases. The presumptive durations shall be as follows:

SEVERITY LEVELS OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
Conspiracy/Attempted Murder, 1st Degree	70 67-73	84 80-88	97 92-103	122 115-128	146 139-153	170 162-179	194 185-203

Correcting case citations, section III.C.:

See Vezina v. State of Minnesota et al. No. 49357 (Minn. S. Ct. Aug. 24, 1979), 289 N.W.2d 408 (Minn. 1979) and State ex rel. Ahern v. Young, 273 Minn. 247-240, 141 N.W.2d 20-15 (1966).

Changes to the Offense Severity Reference Table:

- V Receiving Stolen Goods (\$1000 - \$2500) - 609.525; 609.53
- Bribery - 609.42; 90.41; 609.86
- IV Receiving Stolen Goods (~~\$150-\$2500~~) (\$301-\$999)- 609.525; 609.53
- Sale of Cocaine - 152.15, subd. 1(1)
- III ~~Sale of Cocaine - 152.15, subd. 1(1)~~
- I Obtaining or Retaining a Child - 609.26
- Sale of Simulated Controlled Substance, 152.095; 152.15, subd. 2b

Additions to the Theft Offense List:

Computer Damage
609.88

Computer Theft
609.89

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Unauthorized Use of Motor Vehicle</i> <i>Possession of Marijuana</i>	I	12*	12*	12*	13	15	17	19 18-20
<i>Theft Related Crimes (\$250-\$2500)</i> <i>Aggravated Forgery (\$250-\$2500)</i>	II	12*	12*	13	15	17	19	21 20-22
<i>Theft Crimes (\$250-\$2500)</i>	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
<i>Nonresidential Burglary</i> <i>Theft Crimes (over \$2500)</i>	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
<i>Residential Burglary</i> <i>Simple Robbery</i>	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
<i>Criminal Sexual Conduct, 2nd Degree (a) & (b)</i> <i>Intrafamilial Sexual Abuse, 2nd Degree subd. 1(1)</i>	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
<i>Aggravated Robbery</i>	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
<i>Criminal Sexual Conduct 1st Degree</i> <i>Assault, 1st Degree</i>	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
<i>Murder, 3rd Degree</i> <i>Murder, 2nd Degree (felony murder)</i>	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
<i>Murder, 2nd Degree (with intent)</i>	X	120 116-124	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

☐ At the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation.

☐ Presumptive commitment to state imprisonment.

*one year and one day
(Rev. Eff. 8/1/81; 11/1/83; 8/1/84)

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Criminal Sexual Conduct 1st Degree	VIII	43	54	65	76	95	113	132
Assault, 1st Degree		41-45	50-58	60-70	71-81	89-101	106-120	124-140
Murder, 3rd Degree Murder, 2nd Degree (felony murder)	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
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